

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #7	CCRB Case #: 201803359	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 04/28/2018 9:32 PM	Location of Incident: [REDACTED]	Precinct: 07	18 Mo. SOL 10/28/2019	EO SOL 10/28/2019	
Date/Time CV Reported Mon, 04/30/2018 3:02 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 04/30/2018 3:02 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. SGT Ricardo Montilla	5419	947270	PSA 4
2. An officer			
3. POM David Porras	08967	939244	PSA 4
4. POM Noel Alphonso	16434	953631	PSA 4

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Mancuso	19032	958866	PSA 4
2. POM Matthew Ferguson	07017	956642	PSA 4
3. POM Jesse Williamson	7611	955667	PSA 4
4. POM Thomas Mccue	25893	948292	PSA 4
5. POF Darya Hall	17342	954908	PSA 4
6. POM Juan Collado	06088	956534	PSA 4
7. POM Thomas Cucciniello	19308	962338	PSA 4
8. LT Kenneth Herrarte	00000	941039	PSA 4
9. POM Nicholas Rizzo	19328	954278	PSA 4
10. POM Kirk Bishop	05767	958310	PSA 4

<b>Witness Officer(s)</b>	<b>Shield No</b>	<b>Tax No</b>	<b>Cmd Name</b>
11. POM Stephen Patti	10817	957939	007 PCT
12. POM Sean Robinson	04836	961183	007 PCT
13. POM Antonio Torres	21660	964317	007 PCT
14. POM Paul Tanchajja	05954	961349	007 PCT

<b>Officer(s)</b>	<b>Allegation</b>	<b>Investigator Recommendation</b>
A.SGT Ricardo Montilla	Force: Sergeant Ricardo Montilla used physical force against § 87(2)(b)	
B.SGT Ricardo Montilla	Discourtesy: Sergeant Ricardo Montilla spoke discourteously to § 87(2)(b)	
C.SGT Ricardo Montilla	Force: Sergeant Ricardo Montilla used physical force against § 87(2)(b)	
D.POM Noel Alphonso	Force: Police Officer Noel Alphonso used physical force against § 87(2)(b)	
E.SGT Ricardo Montilla	Force: Sergeant Ricardo Montilla used physical force against § 87(2)(b)	
F.POM David Porras	Force: Police Officer David Porras used physical force against § 87(2)(b)	
G. An officer	Force: An officer used physical force against § 87(2)(b)	
H.POM David Porras	Force: Police Officer David Porras used physical force against § 87(2)(b)	
I.SGT Ricardo Montilla	Force: Sergeant Ricardo Montilla used a Taser against § 87(2)(b)	
J.SGT Ricardo Montilla	Abuse: Sergeant Ricardo Montilla threatened to arrest § 87(2)(b)	
K.SGT Ricardo Montilla	Force: Sergeant Ricardo Montilla used physical force against § 87(2)(b)	

## Case Summary

§ 87(2)(b) filed this complaint with the CCRB via telephone on April 30, 2018.

On April 28, 2018, at approximately 9:00 PM, Sgt. Ricardo Montilla, PO Thomas McCue, and PO Matthew Ferguson of the PSA 4 Anti-Crime team observed § 87(2)(b) and § 87(2)(b) fighting outside of § 87(2)(b) in Manhattan, a part of the NYCHA Gompers Development. At approximately 9:32 PM, Sgt. Montilla, PO McCue, and PO Ferguson apprehended § 87(2)(b) and § 87(2)(b) within the lobby of § 87(2)(b).

§ 87(2)(b) § 87(2)(b) s mother) was also present in the lobby when the officers approached. Sgt. Montilla allegedly pushed § 87(2)(b) from the lobby (**Allegation A: Force**, § 87(2)(g)). Outside of the lobby was § 87(2)(b) a friend of the arrestees. When § 87(2)(b) attempted to enter the lobby, Sgt. Montilla allegedly said to him, “You’re not coming in the fucking building,” and then, “Didn’t I just fucking tell you?” (**Allegation B: Discourtesy**, § 87(2)(g)). Sgt. Montilla also pushed § 87(2)(b) out of the lobby (**Allegation C: Force**, § 87(2)(g)).

Sgt. Montilla then exited the lobby in order to place § 87(2)(b) under arrest. PO Noel Alphonso, PO David Porras, and PO Jesse Williamson of the PSA 4 Anti-Crime team then arrived on scene. PO Alphonso allegedly kned § 87(2)(b) in the groin (**Allegation D: Force**, § 87(2)(g)). § 87(2)(b) before Sgt. Montilla and PO Porras took § 87(2)(b) to the ground (**Allegation E: Force**, § 87(2)(g)). **Allegation F: Force**, § 87(2)(g). As the officers struggled with § 87(2)(b) an officer allegedly pushed § 87(2)(b) away (**Allegation G: Force**, § 87(2)(g)). Additionally, PO Porras allegedly punched § 87(2)(b) (**Allegation H: Force**, § 87(2)(g)). Finally, Sgt. Montilla used a Taser against § 87(2)(b) (**Allegation I: Force**, § 87(2)(g)) bringing the struggle to an end.

Officers brought the five arrestees to vehicle parked outside of § 87(2)(b). As they did so, § 87(2)(b) § 87(2)(b) mother) approached Sgt. Montilla, who allegedly pushed her away (**Allegation J: Force**, § 87(2)(g)) and said that he would “take [her] to jail” (**Allegation K: Abuse of Authority**, § 87(2)(g)).

§ 87(2)(b) was arrested for § 87(2)(a) 160.50. § 87(2)(b) was arrested for § 87(2)(b). § 87(2)(b) was returned on an open warrant. § 87(2)(b) was released with a summons and § 87(2)(b) and § 87(2)(b) arrests were voided.

The investigation obtained NYCHA surveillance video from § 87(2)(b). Sgt. Montilla recorded body-worn camera video in regard to this incident, but because § 87(2)(b) and § 87(2)(b) arrests were sealed, and because they were unavailable to the investigation and did not sign 160.50 waivers, the investigation was unable to obtain this sealed body-worn camera video.

## **Findings and Recommendations**

### **Allegation A—Force: Sergeant Ricardo Montilla used physical force against § 87(2)(b)**

§ 87(2)(b) (Board Review 01) stated that after Sgt. Montilla, PO McCue, and PO Ferguson approached her, § 87(2)(b) and § 87(2)(b) within the lobby of § 87(2)(b) Sgt. Montilla instructed her to exit the lobby. § 87(2)(b) did not move and asked Sgt. Montilla what was taking place. Sgt. Montilla then approached her, placed his palm against her shoulder, and pushed her toward the exit. § 87(2)(b) asked Sgt. Montilla not to touch her and then moved toward the exit of her own power. However, Sgt. Montilla pushed her again, this time through the doorway and out of the lobby.

§ 87(2)(b) provided a phone statement to the investigation but missed an interview appointment and then did not respond at further contact attempts. He stated that when he entered the lobby, Sgt. Montilla yelled that § 87(2)(b) needed to exit. As addressed below in the analysis of Allegation C, he also stated that Sgt. Montilla pushed him from the lobby. However, he did not describe Sgt. Montilla pushing § 87(2)(b)

§ 87(2)(b) declined to participate in the investigation and did not provide a statement. Neither § 87(2)(b) nor § 87(2)(b) nor § 87(2)(b) nor § 87(2)(b) responded to contact attempts.

Sgt. Montilla (Board Review 02) stated that § 87(2)(b)'s presence within the lobby concerned him because he and his two fellow officers were outnumbered by the five individuals whom they had apprehended, and he did not want § 87(2)(b) to interfere. He told § 87(2)(b) that he would explain the situation to her after the officers were finished but that for the time being, he needed her to exit the lobby. Sgt. Montilla stated that he may have lightly placed a hand on § 87(2)(b)'s shoulder in order to encourage her to exit the lobby, but he denied pushing her. § 87(2)(b) then exited the lobby.

As noted above, NYCHA surveillance cameras captured portions of the incident in question. Video Clip #1, below, was recorded by a camera located within the lobby and facing the building's elevators. This clip captured the beginning of the interaction between § 87(2)(b) (who wears glasses, a pink shirt, and pink shoes) and Sgt. Montilla (who has a full beard and wears a black beanie hat).



Video Clip #1.mp4

Video Clip #1 (10 seconds)

Board Review 03; Original video linked to IA #49

Video Clip #2, below, was recorded by a second NYCHA surveillance camera, located within the lobby and facing the windows. This clip captured § 87(2)(b) exiting the lobby:



Video Clip #2.mp4

Video Clip #2 (12 seconds)

Board Review 04; Original video linked to IA #50

Video Clip #1 shows Sgt. Montilla extending an arm toward § 87(2)(b) but does not show whether or not he made physical contact with her. However, he does not appear to make a pushing motion. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation B—Discortesy: Sergeant Ricardo Montilla spoke discourteously to § 87(2)(b)**

§ 87(2)(b)

According to § 87(2)(b) when § 87(2)(b) attempted to enter the lobby, Sgt. Montilla said to him, “You’re not coming in the fucking building,” and then physically removed him from the lobby (addressed below in the analysis of Allegation C). When § 87(2)(b) again opened the door and attempted to enter, Sgt. Montilla said to him, “Didn’t I just fucking tell you? You can’t come inside.”

§ 87(2)(b) described Sgt. Montilla removing him from the lobby but did not allege that Sgt. Montilla used profanity toward him (Board Review 05).

As noted, § 87(2)(b) declined to participate in the investigation and did not provide a statement. Neither § 87(2)(b) nor § 87(2)(b) nor § 87(2)(b) nor § 87(2)(b) responded to contact attempts.

Sgt. Montilla described removing § 87(2)(b) from the lobby (detailed below in the analysis of Allegation C) but stated that he did not recall using profanity toward § 87(2)(b)

Note that the NYCHA surveillance cameras in question did not record audio.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation C—Force: Sergeant Ricardo Montilla used physical force against § 87(2)(b)**

§ 87(2)(b) stated that Sgt. Montilla told § 87(2)(b) and other individuals, who were outside of the lobby, that they could not enter. § 87(2)(b) attempted to enter the lobby, but Sgt. Montilla forcefully pushed him back, away from the lobby door. § 87(2)(b) then pulled the lobby door open, again attempting to enter. Again, Sgt. Montilla pushed § 87(2)(b) back, away from the door.

§ 87(2)(b) stated that when he opened the door to the lobby and heard Sgt. Montilla instructing § 87(2)(b) to exit, § 87(2)(b) told Sgt. Montilla that § 87(2)(b) resided in the building and did not need to leave. Sgt. Montilla then approached § 87(2)(b) and pushed him from the lobby. § 87(2)(b) said, "Do not touch me," and swiped Sgt. Montilla's hands away from his chest. As he did this, he backed out of the lobby, away from Sgt. Montilla. The lobby door then closed.

Sgt. Montilla stated that when § 87(2)(b) entered the lobby, he said that it was his building and that he needed to know what was taking place. Sgt. Montilla told § 87(2)(b) to exit the lobby, but § 87(2)(b) said that he lived there and that Sgt. Montilla could not make him leave. Sgt. Montilla told § 87(2)(b) that he would answer any questions when the officers were finished but that he needed § 87(2)(b) to leave the lobby for the time being. However, § 87(2)(b) would not leave. § 87(2)(b)'s presence concerned Sgt. Montilla for the same reasons § 87(2)(b)'s presence had: § 87(2)(b) was an additional distraction for Sgt. Montilla and his two fellow officers, who were already outnumbered by the five individuals whom they had stopped within the lobby. § 87(2)(b) would also pose a possible threat if he attempted to interfere. Sgt. Montilla escorted § 87(2)(b) out of the lobby but § 87(2)(b) pushed back against him. As such, Sgt. Montilla pushed § 87(2)(b) from the lobby, through the doorway. He did so because § 87(2)(b) would not comply with verbal commands and was pushing back against him.

Video Clip #3, below, was recorded by a NYCHA surveillance camera located within the lobby and facing the windows. This clip captured this interaction between § 87(2)(b) (who wears a yellow t-shirt) and Sgt. Montilla:



Video Clip #3.mp4

Video Clip #3; 26 seconds

Board Review 06; Original video linked to IA #50

Video Clip #3 shows § 87(2)(b) entering the lobby while Sgt. Montilla instructs § 87(2)(b) to exit. Sgt. Montilla points at the door and appears to speak to § 87(2)(b). Sgt. Montilla then guides § 87(2)(b) toward the door, but § 87(2)(b) leans back, pushing against Sgt. Montilla in an apparent attempt to remain within the lobby. Sgt. Montilla then uses two hands to push § 87(2)(b) out of the lobby.

NYPD Patrol Guide Procedure 221-01 states that any officer's application of force must be reasonable given the circumstances (Board Review 07).

§ 87(2)(g)  
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**Allegation D—Force: Police Officer Noel Alphonso used physical force against § 87(2)(b)**

§ 87(2)(b) stated that after Sgt. Montilla pushed him out of the lobby, § 87(2)(b) pulled the door open again. Sgt. Montilla then exited the lobby and took hold of § 87(2)(b). § 87(2)(b) turned to a nearby fence, positioned his arms between the bars, and crossed his arms across his chest so that officers would not be able to move him. Sgt. Montilla attempted to pull § 87(2)(b) away from the fence but was unable to do so. Two other officers then approached and tried, with Sgt. Montilla, to pull § 87(2)(b) from the fence. § 87(2)(b) held onto the fence until PO Alphonso approached and struck § 87(2)(b) in the groin with a knee.

As noted above, § 87(2)(b) provided a phone statement but was ultimately uncooperative and did not provide a verified statement. § 87(2)(b) did not describe any officer striking § 87(2)(b) with a knee or in the groin.

A NYCHA surveillance camera positioned within the lobby partially and facing the windows captured § 87(2)(b) struggling with officers after Sgt. Montilla decided to place him under arrest. Video Clip #4, below, shows the beginning of the struggle and ends when § 87(2)(b) falls to the ground:



Video Clip #4.mp4

Video Clip #4; 39 seconds

Board Review 08; Original video linked to IA #50

Video Clip #5, below, was recorded by a NYCHA surveillance camera positioned outside of the lobby. Although the struggle took place outside of this camera's frame, this camera captured Sgt. Montilla approaching § 87(2)(b) in order to place him under arrest and shows PO Ferguson, PO Williamson, PO Porras, and PO Alphonso approaching to assist Sgt. Montilla:



Video Clip #5.mp4

Video Clip #5; 42 seconds

Board Review 09; Original video linked to IA #47

Video Clip #5 confirms that PO Alphonso, a black male with short braid and wearing a black t-shirt, approached before § 87(2)(b) fell to the ground. However, as noted, this camera did not capture the struggle. Video Clip #4, which partially captured the struggle, does not show whether or not PO Alphonso struck § 87(2)(b) with a knee or otherwise.

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

**Allegation E—Force: Sergeant Ricardo Montilla used physical force against § 87(2)(b)**

**Allegation F—Force: Police Officer David Porras officer used physical force against § 87(2)(b)**

§ 87(2)(b) stated that when Sgt. Montilla approached § 87(2)(b) he maneuvered § 87(2)(b) against a fence and then wrapped his arms tightly around § 87(2)(b) so that § 87(2)(b) could not move his arms. Additional plainclothes officers then arrived on scene and approached. Together, Sgt. Montilla and one of these officers took § 87(2)(b) to the ground. § 87(2)(b) did not know what prompted the officers to take § 87(2)(b) to the ground. She did not know if § 87(2)(b) used force against any officer. § 87(2)(b) landed chest-down on the ground.

As noted above, § 87(2)(b) stated he held onto a fence so that officers would not be able to move him. He held onto the fence until PO Alphonso approached and struck him in the groin with a knee. § 87(2)(b) fell to the ground because PO Alphonso struck him in the groin.

Sgt. Montilla stated that he exited the lobby, told § 87(2)(b) that he was under arrest, and instructed § 87(2)(b) to place his hands behind back. § 87(2)(b) asked, “Why? Why? Because I opened the door?” Sgt. Montilla again told § 87(2)(b) to place his hands behind his back and then attempted to take hold of § 87(2)(b)’s hands. However, § 87(2)(b) pushed him away. PO Alphonso, PO Porras, and PO Williamson then arrived on scene and approached in order to assist Sgt. Montilla. However, § 87(2)(b) continued to resist. He was upright and pushed Sgt. Montilla away. Together, the officers performed a controlled takedown, bringing § 87(2)(b) to the ground. They did so because it is easier to control someone and to effect an arrest when the subject is on the ground. Sgt. Montilla did not remember specifically who took § 87(2)(b) to the ground, but Sgt. Montilla, PO Alphonso, PO Williamson, and PO Porras were all involved in apprehending § 87(2)(b) at this time.

PO Porras (Board Review 10) stated that when he arrived outside of § 87(2)(b) Sgt. Montilla was attempting to pull § 87(2)(b)’s hands behind his back but § 87(2)(b) was resisting and would not allow Sgt. Montilla to handcuff him. PO Porras did not know why Sgt. Montilla was attempting to place § 87(2)(b) under arrest but approached in order to assist. § 87(2)(b) aggressively resisted by tensing his body, holding his arms in front of his chest, and swinging his upper body left and right to keep his hands away from the officers. The officers collectively attempted to pull § 87(2)(b)’s arms behind his back but were unable to do so. PO Porras and § 87(2)(b) then both fell to the ground. PO Porras did not know what caused them to fall. He did not know if Sgt. Montilla or any other officer took § 87(2)(b) to the ground.

Video Clip #4 (Board Review 08), embedded above, shows that the struggle began when § 87(2)(b) attempted to pull the lobby door despite Sgt. Montilla’s effort to hold the door shut. The video ends just after § 87(2)(b) falls to the ground. PO Porras, who wears a gray t-shirt, falls to the ground with § 87(2)(b). However, the video does not clearly show whether § 87(2)(b) fell spontaneously or if an officer or officers intentionally took him to the ground.

As noted, NYPD Patrol Guide Procedure 221-01 states that any officer’s application of force must be reasonable given the circumstances (Board Review 07).



§ 87(2)(g)

**Allegation G—Force: An officer used physical force against § 87(2)(b)**

§ 87(2)(b) stated that while officers struggled with § 87(2)(b) an officer approached and pushed her aside. § 87(2)(b) did not see this officer clearly because it was dark outside and could not provide any description beyond stating that the officer was a male. § 87(2)(b) believed that the officer who pushed her was the same officer who subsequently used a Taser against § 87(2)(b) (addressed below in the analysis of Allegation I). However, it is undisputed that it was Sgt. Montilla who used a Taser against § 87(2)(b) and while § 87(2)(b) provided both a detailed description of Sgt. Montilla and his shield number, she did not believe that he was the officer who pushed her.

§ 87(2)(b) did not describe any officer pushing § 87(2)(b). Further, none of the NYCHA cameras in the area captured any officer pushing § 87(2)(b) but § 87(2)(b) was not always visible in the cameras' frame.

Sgt. § 87(2)(b) [sic] and PO Porras denied ever pushing § 87(2)(b) or seeing any officer do so.

§ 87(2)(g)

**Allegation H—Force: Police Officer David Porras used physical force against § 87(2)(b)**

§ 87(2)(b) stated that when he fell to the ground, he was chest-down. An officer pulled one of his arms behind his back and placed a handcuff on that wrist. § 87(2)(b) was not resisting at this time. § 87(2)(b) stated that, next, an officer used a Taser against him (addressed below in the analysis of Allegation I). § 87(2)(b) still did not resist. Finally, an officer punched him three times in the face, near his left eye.

§ 87(2)(b) did not allege that any officer punched § 87(2)(b). However, she stated that § 87(2)(b) struggled against officers as they attempted to place him in handcuffs.

PO Porras stated that § 87(2)(b) did not comply after he went to the ground and did not allow officers to pull his arms behind his back. He held his arms in front of his chest and tensed them so that the officers could not handcuff him. PO Porras did not recall punching § 87(2)(b) at this time. PO Porras did not prepare a TRI Incident Worksheet regarding this incident (Board Review

11) and stated that he would have done so if he had punched § 87(2)(b). He stated that no officer used force against § 87(2)(b) after § 87(2)(b) was handcuffed.

Sgt. Montilla stated that after § 87(2)(b) was taken to the ground, he continued to push officers away and kick at officers. However, Sgt. Montilla also stated that he did not see any officer punch § 87(2)(b).

Video Clip #5, above, captured PO Ferguson, PO Williamson, PO Porras, and PO Alphonso approaching Sgt. Montilla and § 87(2)(b) in that order, in order to assist Sgt. Montilla in apprehending § 87(2)(b). During his CCRB interview, PO Porras identified himself as the officer wearing a gray t-shirt who enters the right side of the frame at the 22 second mark of Video Clip #5.

As noted above, a NYCHA surveillance camera positioned inside of the lobby and facing toward the windows partially captured § 87(2)(b)'s struggle with the officers. Video Clip #6, below, begins just before § 87(2)(b) falls or is taken to the ground and ends after Sgt. Montilla uses a Taser against § 87(2)(b) (addressed below in the analysis of Allegation I).



Video Clip #6.mp4

Video Clip #6; 19 seconds

Board Review 12; Original video linked to IA #50

Video Clip #6 shows PO Porras and § 87(2)(b) falling to the ground together, near the window. At the 1 second mark, PO Porras rolls § 87(2)(b) onto his back. PO Porras then either straddles or kneels next to § 87(2)(b). § 87(2)(b)'s body is largely obscured and it is unclear what actions he takes after falling to the ground. At the 7 second mark, PO Porras appears to punch § 87(2)(b) on the left side of the face, causing § 87(2)(b)'s head to move suddenly toward the ground.

PO Porras reviewed this portion of video during his CCRB interview. He maintained that he did not strike § 87(2)(b) and did not believe that the video showed him doing so.

As noted, NYPD Patrol Guide Procedure 221-01 states that any officer's application of force must be reasonable given the circumstances (Board Review 07).

§ 87(2)(g)  
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§ 87(2)(g)

**Allegation I—Force: Sergeant Ricardo Montilla used a Taser against § 87(2)(b)**

§ 87(2)(b) stated that after officers took § 87(2)(b) to the ground, two officers attempted to place him in handcuffs. He struggled against them but they pulled his arms behind his back and handcuffed him. An officer then placed a knee on § 87(2)(b)'s back to hold him down. Sgt. Montilla stood next to § 87(2)(b) who was not struggling or resisting at this time. An officer – § 87(2)(b) did not believe this was Sgt. Montilla – then drew his Taser and discharged the Taser at § 87(2)(b)'s rear. The Taser prongs struck § 87(2)(b) in the buttocks. When this officer used a Taser against § 87(2)(b), § 87(2)(b) was rear-cuffed and lay chest-down on the ground, with two officers restraining him.

§ 87(2)(b) stated that when he fell to the ground, an officer pulled his left arm behind his back. His body was relaxed, he lay chest-down on the ground, and he was not resisting. However, an officer – § 87(2)(b) believed this was PO Alphonso – discharged a Taser at § 87(2)(b)'s back. Finally, officers placed § 87(2)(b) in handcuffs.

Sgt. Montilla stated that when § 87(2)(b) was taken to the ground, he landed chest down. § 87(2)(b) continued to push officers away and kick at them. Sgt. Montilla did not remember if § 87(2)(b) struck any officer with a kick, but no officer was injured during the struggle. Because § 87(2)(b) continued to struggle against officers, Sgt. Montilla decided to use a Taser against him. The officers had attempted to gain compliance by overpowering § 87(2)(b) physically but had been unsuccessful. Sgt. Montilla considered the Taser to be an appropriate non-lethal option. Sgt. Montilla preferred it to the use of pepper spray because he wore contact lenses and proximity to pepper spray would have rendered him incapable of effecting the arrest. He also did not want to use a baton and believed the Taser to be a better option than a striking weapon. Sgt. Montilla drew his Taser and discharged it, striking § 87(2)(b) in the back with both prongs. He discharged the Taser for one cycle. The use of the Taser was effective, and the officers were able to pull § 87(2)(b)'s hands behind his back and place him in handcuffs. The physical altercation came to an end.

Sgt. Montilla prepared a TRI Incident Worksheet pertaining to this incident, according to which § 87(2)(b) engaged in “wrestling/grappling” and “pushing/shoving,” and according to which Sgt. Montilla used Taser #X130048E2 against § 87(2)(b) in order to overcome § 87(2)(b)'s “resistance or aggression” and in order to defend himself and other officers (Board Review 13).

The data sheet for Taser #X130048E2 confirms that the Taser was discharged for one five-second cycle at the time of the incident (Board Review 14).

As noted, PO Porras stated that § 87(2)(b) did not comply after he went to the ground and did not allow officers to pull his arms behind his back. He held his arms in front of his chest and

tensed them so that the officers could not handcuff him. After officers struggled with § 87(2)(b) on the ground for approximately one minute, Sgt. Montilla used a Taser against him. The officers were then able to pull § 87(2)(b)'s arms behind his back and place him in handcuffs.

Video Clip #6, above, begins just before § 87(2)(b) falls or is taken to the ground and ends after Sgt. Montilla uses a Taser against § 87(2)(b). In this clip, § 87(2)(b)'s body is largely obscured and it is unclear what actions he takes after he falls to the ground. At the 7 second mark, PO Porras appear to punch § 87(2)(b) on the left side of the face. The struggle continues for seven more seconds before Sgt. Montilla discharges a Taser at the 14 second mark. The struggle then comes to an end. After the end of Video Clip #6, the officers place § 87(2)(b) in handcuffs and lift him to his feet.

Sgt. Montilla reviewed this portion of video during his CCRB interview. He stated that the video was consistent with his recollection and he had no other response to the video.

NYPD Patrol Guide Procedure 221-01 states that any officer's application of force must be reasonable given the circumstances (Board Review 07). NYPD Patrol Guide Procedure 221-08 details the guidelines for use of conducted electricity weapons (CEWs) such as Tasers (Board Review 15). According to this procedure, such weapons can serve as effective means to subdue an aggressive suspect or emotionally disturbed persons and are intended to provide a greater margin of safety for officers who might otherwise be forced to physically subdue a dangerous subject. A CEW should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons actually present. According to this procedure, among the factors an officer should consider when deciding whether or not to use a CEW are: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; whether the subject is attempting to evade arrest by flight; the number of subjects in comparison to the number of MOS; the size, age, and condition of the subject in comparison with MOS; the subject's violent history, if known; the presence of a hostile crowd or agitators; and whether the subject is under the influence of a stimulant or narcotic which would affect pain tolerance or increase the likelihood of violence.

§ 87(2)(g)

[REDACTED]

**Allegation J—Abuse of Authority: Sergeant Ricardo Montilla threatened to arrest § 87(2)(b)**

**Allegation K—Force: Sergeant Ricardo Montilla used physical force against § 87(2)(b)**

§ 87(2)(b) (Board Review 16) stated that when she approached the van where officers had lodged her son, § 87(2)(b) Sgt. Montilla pushed her away. § 87(2)(b) told Sgt. Montilla not to push her, and he said, in substance, "Get off the street or I'll take you to jail."

§ 87(2)(b) provided a phone statement but missed an interview appointment and then, despite full additional contact attempts, did not provide a verified statement. § 87(2)(g)

**Civilian and Officer CCRB Histories**

- § 87(2)(b) has been party to two prior CCRB complaints and has been named a victim in one allegation (Board Review 17).
  - § 87(2)(b)
- This is the first CCRB complaint to which either § 87(2)(b) (Board Review 18) or § 87(2)(b) (Board Review 19) has been a party.
- Sgt. Montilla, who has been a member of the NYPD for ten years, has been a subject in nine other CCRB complaints with twenty-four allegations, none of which have been substantiated (Board Review 20).
  - Case #201510801 involved an allegation that Sgt. Montilla threatened to arrest § 87(2)(b). That allegation was exonerated.
  - Case #201705651 involved allegations that Sgt. Montilla pushed § 87(2)(b) and threatened to arrest § 87(2)(b). Those allegations were exonerated. That case also involved an allegation that Sgt. Montilla spoke discourteously to § 87(2)(b). That allegation was unsubstantiated.
  - Case #201804864 involved allegations that Sgt. Montilla threatened to arrest individuals. That case was closed pending litigation.
  - As of the writing of this report, Case #201804434 is pending investigation and § 87(2)(b).
- PO Porras, who has been a member of the NYPD for thirteen years, has been a subject in nine other CCRB complaints with twenty-one allegations, none of which have been substantiated (Board Review 21). § 87(2)(g)

**Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- As of September 21, 2018, the New York City Office of the Comptroller had no record of any Notice of Claim being filed in regard to this incident (Board Review 22).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_

Signature	Print Title & Name	Date
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Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
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Reviewer: \_\_\_\_\_

Signature	Print Title & Name	Date
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